

191—48.9(508E) Requirements and prohibitions.

48.9(1) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or have knowledge of the identity of the viator.

48.9(2) A viatical settlement investment agent is deemed to represent the viatical settlement provider with whom the viatical settlement investment agent is appointed or contracted.

48.9(3) Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

48.9(4) Before entering into a viatical settlement contract, a viatical settlement provider shall obtain:

a. If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

b. A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, a viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

48.9(5) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subrule 48.9(6).

48.9(6) The viatical settlement provider shall deliver a copy of the medical release required under paragraph 48.9(4) "b," a copy of the viator's application for the viatical settlement contract, the notice required under subrule 48.9(5) and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The NAIC's form for verification shall be used unless standards for verification are developed by the commissioner.

48.9(7) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the insurance contract.

48.9(8) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, represents that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons who are chronically ill or terminally ill under the definitions of Iowa Code sections 508E.2(1) and (3), acknowledges that the insured is chronically ill or terminally ill and that the chronic or terminal illness or condition was diagnosed after the life insurance policy was issued.

48.9(9) All medical information solicited or obtained by any viatical settlement provider or viatical settlement broker shall be subject to the provisions of 191—Chapter 90, which governs the confidentiality of medical information.

48.9(10) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the viatical settlement contract for at least 15 calendar days from the receipt of the viatical settlement contract proceeds. If the insured dies during the viatical settlement contract rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or viatical settlement purchaser of all viatical settlement contract proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or viatical settlement purchaser.

48.9(11) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary of the insurance policy or certificate directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider), the viatical

settlement provider shall pay or transfer the proceeds of the viatical settlement contract into an escrow or trust account established with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow account has been established by a viatical settlement provider or viatical settlement purchaser. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider within three business days. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator within three business days.

48.9(12) Failure to tender consideration to the viator for the viatical settlement contract within the time required by subrule 48.9(11) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

48.9(13) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or the provider's or broker's authorized representatives and shall be limited to once per year if the insured has a life expectancy of more than two years, once every three months for an insured with a life expectancy of more than one year, and no more than once per month for an insured with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subrule shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

48.9(14) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.

48.9(15) Payment by the escrow agent of the proceeds of a viatical settlement contract shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.

48.9(16) Payment of the proceeds to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has purchased a single-premium paid-up annuity issued by a licensed insurance company to the viator. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.

48.9(17) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall not provide identifying information about either the insured or the viator to any person, unless the insured and viator provide written consent to the release of the information at or before the time of the viatical settlement transaction pursuant to subrule 48.5(1) and rule 48.7(508E) or if such release is necessary to report suspected fraudulent viatical settlement acts pursuant to subrule 48.11(4).

48.9(18) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall obtain from a person that is provided with identifying information about either the insured or the viator a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured or the viator for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider, viatical settlement broker or viatical settlement investment agent is served with a subpoena and thereby compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last-known addresses within five business days after receiving notice of the subpoena.

48.9(19) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, related to the same viatical settlement contract.

48.9(20) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

48.9(21) A viatical settlement provider shall not use a longer life expectancy than is reasonable based on all medical and actuarial information available at the time of a viatical settlement transaction in order to reduce the payout to which the viator is entitled.

48.9(22) A viatical settlement provider or viatical settlement broker shall not discriminate in the making or solicitation of viatical settlement contracts on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with or without dependents.

48.9(23) A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to an insured or viator, or to any other person acting as an agent of an insured or viator with respect to a viatical settlement contract.

48.9(24) A viatical settlement provider shall not knowingly solicit individuals who have treated or have been asked to treat the illness of an insured whose coverage would be the subject of a viatical settlement contract.

48.9(25) A viatical settlement provider shall not structure a viatical settlement investment contract in a manner which requires an insurer to keep track of more than ten beneficiaries for each insurance contract being viaticated.

48.9(26) Viatical settlement contracts entered into within the first two years of issuance of insurance.

a. A person shall not enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(2) The viator is a charitable organization exempt from taxation under 26 U.S.C. §501(c)(3);

(3) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

1. The viator or insured is terminally ill or chronically ill, as defined in Iowa Code section 508E.2(1) or (3);

2. The viator's spouse dies;

3. The viator divorces the viator's spouse;

4. The viator retires from full-time employment;

5. The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;

6. The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

7. A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets;

8. The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

9. The viator or insured disposes of ownership interests in a closely held corporation.

b. Copies of the independent evidence described in this subrule and documents required by subrule 48.9(6) shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

48.9(27) If a viatical settlement broker performs any of the activities required of the viatical settlement provider by this rule, the viatical settlement provider is deemed to have fulfilled the requirements of this rule.

48.9(28) Insurance company practices.

a. Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within 30 calendar days of the date a request is received, including the insurer's intent to pursue an additional investigation regarding possible fraud or the validity of the insurance contract, subject to the following conditions:

(1) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;

(2) In the case of an individual policy, submission of a form substantially similar to the NAIC's most current form describing verification of coverage for individual policies, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form;

(3) In the case of group insurance coverage, submission of a form substantially similar to the NAIC's most current form describing verification of group life insurance benefits,

1. Which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form, and

2. Which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

b. Nothing in this subrule shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.

c. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this subrule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

d. The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner(s) or certificate holder(s) and, in cases in which the policyowner or certificate holder is other than the insured, to the insured. The acknowledgment may contain a description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract and said acknowledgment may compare the benefits of accelerating the death benefits to the viatication of the policy.

e. If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subrule 48.9(8) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this subrule and the insurer shall timely respond to the request.